[DE] Agreement on 12th Inter-State Broadcasting Agreement Prepared

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According to press reports, the head of the State Chancellery of Rhineland-Palatinate, the *Land* in overall charge of the discussions, has announced that at their mid-September 2008 meeting the heads of the State and Senate chancelleries agreed on solutions to the outstanding issues concerning the implementation of the compromise with the European Commission. These solutions are to be incorporated into the *12. Rundfunkänderungsstaatsvertrag* (12th Inter-State Broadcasting Agreement – RÄStV).

In talks with Commission representatives on 16 September 2008, these outline proposals were then clarified and the European authority said it had no reservations. This, the reports say, will enable the *Land* Prime Ministers to reach agreement on 22 and 23 October 2008. The *Land* parliaments and the European Commission will then be informed. It can accordingly be assumed that the ratification process in the *Land* parliaments will be completed in time, and this will in turn enable the Agreement to enter into force by May 2009, the deadline agreed in the “state aid compromise”.

It emerges from the current draft that the three additional digital television programmes of ARD and ZDF will not have to undergo a three-stage test but, rather, will be commissioned (with concrete content requirements) by the *Länder* .

In the case of telemedia services, the three-stage test will always have to be carried out. Entertainment offerings are also considered permissible, both with regard to telemedia that relate to a specific programme and those that do not. However, in all cases the 7-day time-limit will apply, after which it will be possible to exploit the offerings commercially but not make them available free of charge. In addition to “bought-in feature films and series”, sports broadcasts are also excluded from these provisions. Furthermore, if these broadcasts constitute events specified in the list contained in section 4 of the RStV they may only be offered for retrieval for a period of 24 hours.

The three-stage test thus has to be carried out for all telemedia services that are provided by the public-law institutions (including multimedia libraries) and are available on 30 April 2009. This test, which must be completed no later than 31 December 2010, will be carried out on the basis of the institution’s own telemedia

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concepts and rules on the procedure for conducting it.

There is also provision for specific quorums to be met by the institutions' internal bodies when the test is applied so that its validity can be recognised by the authority responsible for legal supervision.

In a minuted note, the subject of the relationship that public-law institutions, as commissioners of productions, have with manufacturers, scriptwriters and directors is mentioned, and it is pointed out that the issue involved here is the establishment of fair rules when drawing up provisions concerning rights to the (digital) exploitation of works.

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